

MALAYSIAN REPORTS**JOHARI BIN KHALID & ANOR. v.
MOHAMED ZAMRI BIN KHALID & ANOR.
(No. 2)**[F.C. (Seah, Mohamed Azmi & Syed Agil Barakbah F.JJ.)
July 11, 1984][Kuala Lumpur — Federal Court Civil Appeal No. 276 of
1983]*Practice and Procedure — Application for leave to
appeal to Yang di-Pertuan Agong — Questions of fact —
Leave refused.*

In this case the respondents applied for conditional leave to appeal to the Yang di-Pertuan Agong. In the High Court, quantum of damages was agreed but liability for the accident was disputed by the appellants. At the conclusion of the trial the learned judge gave judgment in favour of the respondents. On appeal to the Federal Court the finding of the trial judge was reversed and the appeal was allowed ([1985] 1 M.L.J. 142).

Held: the intended appeal involved substantially factual grounds and leave to appeal should be refused on the facts of the case.

FEDERAL COURT.

M. Mahalingam (Senior Federal Counsel)
for the appellants.

David Tay (C. Foo with him) for the respondents.

Seah F.J. (delivering the Judgment of the Court): This was an application by the respondents under section 74(1)(a)(i) and (ii) of the Courts of Judicature Act 1964 (as amended) for conditional leave to appeal to the Yang di-Pertuan Agong.

In the High Court, quantum of damages was agreed but liability for the accident was disputed by the appellants. At the conclusion of the trial the learned judge gave judgment in favour of the respondent. On appeal to the Federal Court the finding of the learned trial judge was reversed and the appeal was allowed.

We have perused the judgments of the High Court and the Federal Court and in our opinion, the intended appeal involved substantially factual grounds and in the exercise of our discretion, leave to appeal ought to be refused on the facts of this case.

Order accordingly.

Solicitors: *Murphy & Dunbar.*

A**PEMUNGUT HASIL TANAH, KUANTAN
v. SIM HOE WOOD & SAWMILLS SDN.
BHD. & FIVE OTHER CASES**[F.C. (Lee Hun Hoe C.J. (Borneo), Seah & Syed Agil
Barakbah F.JJ.) March 20 & August 15, 1984]**B**[Kuala Lumpur — Federal Court Civil Appeal Nos. 58,
59, 60, 61, 62 and 75 of 1983]*Land Law — Land acquisition — Previous sale of
lots — Principles applicable — Method of approach —
Land Acquisition Act, 1960, ss. 4 & 8.***C**

These cases involved four lots of land which were, *inter alia*, acquired by the Government of Pahang for the Gebeng Industrial area. The four acquired lots were 1954, 1955, 402 and 764 respectively. Lot 402 had three co-owners and the rest one each but all the six references were heard together. The learned judge made the following decisions:—

D

(1) *Lot 1954* in Civil Appeal No. 75/83, confirmed the Collector's award of \$12,000/- per acre.

(2) *Lot 1955* in Civil Appeal No. 61/83, increased the Collector's award from \$12,000/- to \$19,250/- per acre.

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(3) *Lot 402* in Civil Appeals Nos. 59, 60 and 62/83, increased the Collector's award from \$11,400/- to \$14,062/- per acre.

(4) *Lot 764* in Civil Appeal No. 58/83, increased the Collector's award from \$10,000/- to \$14,844/- per acre.

F

The landowner of Lot 1954 appealed against the decision of the learned Judge while the Collector being dissatisfied with the Judge's decision appealed against the increase in the awards for the other three lots.

G

The owners of the scheduled lands and their counsel were absent at the inquiry before the Collector and it was submitted that they had therefore no right to compensation exceeding the sums awarded by the Collector. However the point was not brought to the attention of the learned Judge at the commencement of the proceedings as a preliminary issue nor has this point been included as a ground of appeal nor made an issue in the written submissions.

H

It was agreed between the parties in the court below that lots 1954 and 1955 were to be treated as basis in determining the values of the other lots. In relation to lot 502 a 5% deduction would be made to the value of lots 1954 and 1955 and in relation to lot 764 a 10% deduction would likewise be made to the value of the said lots. Lot 1954 had been sold two years prior to the material date at \$8000/- per acre and lot 1955 was sold about three years prior at \$11,000/- per acre. The learned Judge treated the lots separately and he made due allowance for all the circumstances by allowing the average increase of the price per annum based on the valuation reports.

Held: (1) the preliminary objection relating to the absence of the owners and their counsel at the hearing

In our view, the point should have been brought to the notice of the learned Judge at the

commencement of the references preferably as a preliminary issue by the Legal Adviser appearing on behalf of the Collector. The Judge would then be in a position to consider whether by their absence at the inquiry there was any justification for the land owners' refusal or omission to make the claim for compensation before the Collector. The landowners should be given the opportunity to explain. Although the Judge took quite a serious view of the matter, he did so only in passing, proceeded to deal with the references and increased three of the four awards made by the Collector. Before us too the State had not included this as a ground of appeal nor made any issue in their written submissions. If at all an objection was to have been taken, it should have been done in a proper manner and at the proper time so as to enable the Judge to exercise his discretionary power judicially. It should not be treated as a matter of course.

The main ground of appeal relates to the method of valuation adopted by the learned Judge in assessing the awards for the scheduled lands. It was agreed between the parties in the court below that Lots 1954 and 1955 were to be treated as basis in determining the values of the other two lots. In relation to Lot 402, a 5% deduction would be made to the value of Lots 1954 and 1955 and in relation to Lot 764, a 10% deduction would likewise be made to the value of the said two lots.

The crucial point was whether Lots 1954 and 1955 should be awarded the same or different values. The Judge as stated earlier valued Lot 1955 much higher than Lot 1954. On the other hand, both the objectors and the State affixed the same valuation for the two lots; the objectors through their valuation reports, at \$20,000/- per acre and the State, through the reports of the Government Valuation Officer (G.V.O.) at \$12,000/- per acre. Incidentally the latter award was acted upon by the Collector while the learned Judge accepted it only for Lot 1954. The obvious reason why both parties agreed to accept the same valuation for the two adjacent lots is because of the similarity in terrain, size, shape, nature of cultivation and access or proximity to the highway of the two adjoining lots. With respect, we agree with the contention of both parties on the grounds stated above that Lots 1954 and 1955 should be awarded the same valuation. What is then the reasonable and fair value?

It seemed that because of the vast number

A of lots in the area required for industrial purpose the G.V.O. had to adopt the mean average method instead of the usual comparable sales method in valuing the acquired lands. Initially 258 lots were gazetted for acquisition but eventually 69 lots were acquired. The G.V.O. has prepared quite a comprehensive report together with a detailed site plan of the whole area.

B In his grounds of judgment, the learned Judge appeared to agree with the method of valuation adopted by the G.V.O. who took a mean average of the sales of about 105 lots of lands in the area which had a bearing on the subject lots. There was evidence of a noted increase in value between 1972 and 1973 rising to a peak average by mid-1975. Thereafter there was a steady decline between 8% and 10% from December 1975. Between 1975 till the date of acquisition, i.e. March 31, 1977 there was an average increase of 18% to 20% per year. The average price by December 1977 remained at \$8,400/- per acre. It was noted that the increase in the valuation might also be due to speculation because of the impending development affecting the area into an industrialised area. The Judge said:

C "In such a situation it may often happen that the prices between one piece of land and another may show such increases as would have no bearing on the proximity of time and physical distance. To take the mean average, as the Government Valuer had done, from the sales of land in a given area is, in my view, a fair method of assessment, provided the sales are by and large within a close proximity of the subject land, which should normally be the case."

D Further on, he continued:

E "In my view, in view of the large number of sales cited showing high and low prices surrounding the subject land, the better approach would be to take the mean average as the Government Valuer had done subject to making the necessary allowance for any error she might have made in her computation of the average."

F The learned Judge however considered the previous sales of the two lots and added thereto a 25% increase in value per annum for each lot. In other words, he added five per cent "for any element of error" to 20% average annual increase as recommended by the G.V.O. Lot 1954 which was sold on June 12, 1975 for \$8,000/- per acre was valued at \$12,000/- per acre, i.e. by increasing it by 25% per annum for two years. Using the same yardstick for a period of three years for Lot 1955 which was sold for \$11,000/- per acre on June 17, 1974, he awarded the sum of \$19,200/- per acre.

Since he arrived at two different values, he took the average between them for the purpose of valuing the other two lots. By deducting 5% from the average, he valued Lot 402 at \$14,844/- per acre and by deducting 10% therefrom, he valued Lot 764 at \$14,844/- per acre. As a result, the value of each of the two lots is higher than Lot 1954. That should not be the case.

We are satisfied that the learned Judge has applied the correct principle firstly, in considering the evidence of the sale of the subject lots apart from sales of neighbouring lots and, secondly, in making due allowance for all the circumstances by allowing the average increase of the price per annum based on the valuation reports. However, we cannot say that he has adopted the right approach.

Instead of treating Lots 1954 and 1955 separately and giving them different valuations, he should have considered the average value straight-away. As stated earlier, Lot 1954 was sold about two years prior to that at \$8,000/- per acre and Lot 1955 was sold about three years prior at \$11,000/- per acre. The average of the two lots would be \$9,500/- per acre and the average years of sale would be 2½ years. At 25% increase in value per annum, it would give a mean average of \$15,500/- per acre. In our view in the circumstances of this case, this sum is a true reflection of the price that a willing owner who is not obliged to sell might reasonably expect to obtain from a willing purchaser with whom he was bargaining for sale and purchase of the said lands. (See *Nanyang Manufacturing Co. v. The Collector of Land Revenue Johore*⁽¹⁾ and *Kailas Chandra v. Secretary of State*⁽²⁾).

It should follow from the above for the purpose of valuing the two remaining lots, Lot 402 should be \$14,725/- per acre (a deduction of 5%) and Lot 764 should be \$13,950/- per acre (a deduction of 10%).

In the circumstances, we allow the appeals. The awards by the learned Judge are set aside and substituted by the following:—

- (1) The sum of \$15,500/- per acre for Lot 1954 and Lot 1955 respectively;
- (2) The sum of \$14,725/- per acre for Lot 402; and
- (3) The sum of \$13,950/- per acre for Lot 764.

- A** There will be no order as to costs. Since the compensations awarded by us in appeal Nos. 59/83, 60/83, 61/83 and 62/83, except for Civil Appeal No. 58/83, exceed the sum awarded by the Collector, we direct the appellant in the above mentioned appeals to pay to the respondents herein interest on the excess at 6% per annum under section 48 of the Land Acquisition Act 1960. Similarly, the respondent in Appeal No. 75 of 1983 is ordered to pay to the appellant herein interest on the excess at 6% per annum.

C *Order accordingly.*

Solicitors: *Balendran, Chong & Bodi; Zuki, Ghani & Amin.*

D

**CREDIT CORPORATION (MALAYSIA)
BHD. v. K. M. BASHEER AHAMED & ANOR.**

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[F.C. (Abdul Hamid C.J. (Malaya), Mohamed Azmi & Syed Agil Barakbah F.J.J.) April 17 & September 28, 1984]
[Kuala Lumpur — Federal Court Civil Appeal No. 259 of 1982]

- F** *Contract — Lease of photostat machine — Defective machine — Liability of lessee to pay rental — Disposal by lessor not by bona fide sale — Damages.*

G In this case at the request of the respondents, the appellant purchased a photostat copier machine and leased it to them for a term of 36 months for the total rental of \$13,623.84 payable in the sum of \$378.44 per month. At the expiration or sooner determination of the lease the appellant as the owner was entitled to take back the machine and dispose of it. Two days after installation in the respondent's premises the machine broke down. It became defective thereafter in spite of constant servicing, repairs and replacement of parts by the supplier at the request of the respondents and with the knowledge of the appellant. As a result, the respondent's business was adversely affected resulting in losses. The respondents stopped paying the monthly instalments. The appellant exercised its rights under the agreement and took custody of the machine. The appellant brought an action and claimed the total rental as specified in the agreement less that already paid. The President of the Sessions Court gave judgment for two months' arrears of rental and the appeal of the appellant was dismissed in the High Court. The appellant appealed to the Federal Court.

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I *Held*, dismissing the appeal: (1) in the circumstances there was more than sufficient ground for the appellant to have taken action against the suppliers for damages and the respondents were not obliged to continue paying the total specified rental;